THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MAJOR SPORTING EVENTS (INDICIA AND IMAGES)
PROTECTION AMENDMENT BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Regional Services, Sport, Local Government and Decentralisation, Senator the Hon Bridget McKenzie)
MAJOR SPORTING EVENTS (INDICIA AND IMAGES)
PROTECTION AMENDMENT BILL 2018

OUTLINE

The Major Sporting Events (Indicia and Images) Protection Amendment Bill 2018 will make amendments to the Major Sporting Events (Indicia and Images) Protection Act 2014 to provide protection against ambush marketing by association for the International Cricket Council (ICC) T20 World Cup 2020 (T20 World Cup). The Bill also seeks to remove historical schedules related to the Asian Football Confederation (AFC) Asian Cup 2015 and the ICC Cricket World Cup 2015.

Rights protection is a critical element of hosting major sporting events to protect the commercial rights and investment of event owners and their sponsors. Ambush marketing by association is the unauthorised commercial use of event indicia and images to suggest a formal association with that event. Ambush marketing can confuse the public as to the identity of the real event sponsors.

The Government is committed to supporting the staging of T20 World Cup in Australia. The Bill seeks to provide protection for the T20 World Cup that is similar to the protection provided for the Gold Coast 2018 Commonwealth Games, AFC Asian Cup 2015, ICC Cricket World Cup 2015, Melbourne 2006 Commonwealth Games and Sydney 2000 Olympic Games.

The T20 World Cup comprises two separate tournaments held in Australia between 21 February – 8 March 2020 (women’s tournament) and 18 October – 15 November 2020 (men’s tournament). The Bill seeks to provide protection for T20 World Cup indicia and images in the lead up to, during, and in the immediate aftermath of the T20 World Cup. The protection of T20 World Cup indicia and images during this period will enable T20 World Cup organisers to protect existing sponsors, attract additional sponsors, and achieve its sponsorship revenue targets. In turn, this will reduce the financial impact on government.

Financial Impact Statement

The Bill is not expected to have any financial impact on Commonwealth expenditure or revenue.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The Bill will amend the Major Sporting Events (Indicia and Images) Protection Act 2014 (Major Sporting Events Act) to provide protection against ambush marketing by association for the International Cricket Council (ICC) T20 World Cup 2020 (T20 World Cup), giving effect to commitments made by the Australian Government. Ambush marketing by association is the use of imagery or terminology to create an illusion that a non-sponsor has links to an event.

The Bill will also remove schedules related to two historical events, being the Asian Football Confederation Asian Cup 2015 and the ICC Cricket World Cup 2015.

Cricket Australia has established T20 World Cup 2020 Ltd. to deliver the T20 World Cup in Australia. ICC Business Corporation FZ LLC is a wholly owned subsidiary of the ICC granted staging rights by the ICC for T20 World Cup. The ICC, as the international governing body for cricket, is the T20 World Cup event owner. Event owners typically own the intellectual property and commercial rights relating to an event.

Human rights implications

The Bill engages the following human rights:

- the right to enjoy and benefit from culture in article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to freedom of expression in article 19(2) of the International Covenant on Civil and Political Rights (ICCPR);
- the right to protection against arbitrary and unlawful interferences with privacy in article 17 of the ICCPR; and
- fair trial and fair hearing rights in article 14(1) of the ICCPR.

The right to enjoy and benefit from culture

Article 15(1)(a) of the ICESCR recognises the right of everyone to take part in cultural life. According to the United Nations Committee on Economic, Social and Cultural Rights, the right to culture includes sports and games. This right encompasses access to culture, which includes the availability of a cultural infrastructure, such as places for recreation and sports.
Cricket Australia is actively engaged in a range of activities that will provide benefit to the Australian public, as it will provide the public with greater access to such events as well as provide opportunities for Australian sportspeople to compete in top-level international tournaments in front of their home crowds. Activities will include but not be limited to:

- Promotion of participation at both recreational and elite levels, including initiatives aimed at the inclusion of minority groups, Indigenous peoples and women at the grassroots level;
- Improved access to cultural infrastructure for the community, including ethnic groups, minorities, Indigenous peoples, persons with disabilities and women through the upgrading and building of sports facilities;
- Creation of further opportunities to host similar major sporting events in the future by building upon Australia’s reputation as a host of successful major sporting events, thus providing further opportunities for Australians to access similar sporting events;
- Community engagement through education programs and multicultural events; and
- Strengthening cultural ties between Australia and participating nations, which will provide opportunities for tourism, trade and the further mutual development of cultural understanding.

Revenue generated through the protection of T20 World Cup indicia and images will be key to ensuring Cricket Australia and T20 World Cup 2020 Ltd. can afford to host the event, as well as providing cultural and other legacies such as those outlined above. Accordingly, a person’s right to enjoy and benefit from culture is promoted through Cricket Australia delivering the T20 World Cup and the cultural ancillary activities and outcomes detailed above.

**Right to freedom of expression**

As the Bill primarily seeks to limit the ability of non-authorised users to use protected T20 World Cup indicia and images in their publications, broadcasts, displays or promotions, the Bill engages and limits the right to freedom of expression in article 19 of the ICCPR. The right to freedom of expression is not an absolute right and may be permissibly limited for a number of reasons, including where it is necessary for the protection of the rights and freedoms of others (article 19(3)). The proposed limitation will restrict the use of the protected T20 World Cup indicia and images from the day after the amendment Act receives the Royal Assent until 30 November 2021. This limitation is necessary to promote the rights of people to access culture by ensuring that sufficient revenue can be raised to stage the T20 World Cup, including through sponsorship and the commercial use of the indicia and images.

The Major Sporting Events Act contains remedies for using the protected indicia or images, which include the ability to seek injunctions, damages, corrective advertisement and the seizure of goods. It also provides limited exemptions for certain third parties from prohibitions against the use of certain indicia and images where the use is for the purpose of the provision of information, or the purpose of criticism or review in certain cases. It does this by balancing a commercial use test at section 12 with an exemption at section 14. For a breach to occur, it would need to be considered
that the images and indicia were applied by the user for the primary purpose of advertising or promoting or enhancing demand for the user's goods or services. That is, the primary purpose would not be for the purposes of genuine criticism, review or the provision of information.

The Major Sporting Events Act also provides that the court may make an order requiring a person to publish at their own expense a corrective advertisement, if the court is satisfied that the person has used a protected indicia or image without authorisation (section 47). Remedies are available to the authorising bodies under the legislation as a means of protecting their commercial interests. Without sponsorship the cost of staging major international sporting events would rely heavily on government support.

The objective of the corrective advertisement mechanism is to reverse the harm done by the false impression that may be created by the unauthorised use of the event indicia and images. Although this may involve a restriction on the unauthorised user's freedom of expression, this is considered justifiable; both to alert the community to the unauthorised use and to preserve the protection of the authorised user's rights that the Major Sporting Events Act is intended to afford. This is proportionate to the harm created by the unauthorised use because the use of advertising is an equivalent means of correcting the false impression created by the unauthorised use. The power to order corrective advertising also serves to deter future contraventions and encourages compliance.

Accordingly the limitation of a person's right to freedom of expression, including the right not to be compelled to engage in particular forms of expression is reasonable, necessary and proportionate to the objective of promoting the right of the Australian public to access and benefit from the staging of major sporting events like T20 World Cup.

Right to protection against arbitrary and unlawful interferences with privacy

The Bill engages with the right to protection against arbitrary and unlawful interferences with privacy in two ways:

1. seizure of imported goods; and
2. the provision of information about the importer of the seized goods by the Comptroller-General of Customs to the T20 World Cup authorising body.

As the Major Sporting Events Act has provisions for search and seizure of imported goods in accordance with the Trade Marks Act 1995 (Trade Marks Act) and the Copyright Act 1968 (Copyright Act), the Bill engages and limits article 17 of ICCPR, which prohibits arbitrary or unlawful interference with a person's privacy, family, home or correspondence. Interferences with privacy may be permissible, provided they are authorised by law and are not arbitrary. In order for an interference with the right to privacy not to be 'arbitrary', the interference must be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted 'reasonableness' in this context to imply that 'any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case'.
The Bill also engages the right to privacy as the Major Sporting Events Act contains provisions to collect, use, store and share personal information. The Copyright Act (Part V – Remedies and Offences, Division 7 – Seizure of imported copies of copyright material) and the Trade Marks Act (Part 13 – Importation of goods infringing Australian trade marks) contain provisions for dealing with imports that are suspected of infringing copyright or registered trademarks. These two Acts allow intellectual property rights owners to lodge a ‘notice of objection’ with the Comptroller-General of Customs in respect of a particular copyright or trade mark. These Acts permit the Comptroller-General of Customs to seize goods suspected of infringing those rights for a limited period of time, to permit the intellectual property owner to institute infringement proceedings against the importer.

If an importer wishes to reclaim goods after the end of the action period, they must first file a claim for release. A failure to file a valid claim for release will result in the seized goods being forfeited. The intention is that the claim form will provide sufficient information about the importer of the goods (or their Australian agent) to enable them to be contacted for the purposes of instituting infringement proceedings. The Comptroller-General of Customs is authorised under the Copyright Act and the Trade Marks Act to pass this information on to the rights owner.

Regulation 22 of the Copyright Regulations 2017 and Regulation 13.5 of the Trade Marks Regulations 1995 prescribe the following information that must be included in a valid claim for release:

- the importer or designated owner's full name, home or business address and address for service
  - the importer or designated owner's telephone number
- if the importer or designated owner's home or business address is not in Australia:
  - an address for service for the person who is the importer's agent in Australia
  - a telephone number for the person
  - information showing that the person agreed to be the importer's agent

The Bill will permit this information to be shared in relation to the protected T20 World Cup indicia and images. As such, it limits the right to protection from arbitrary and unlawful interference with privacy in Article 17 of the ICCPR. However, the limitation is proportionate to achieving the legitimate objective of the Bill. This is because T20 World Cup intellectual property rights owners need access to this personal information to allow them the opportunity to enforce their rights to a fair trial and fair hearing.

Without such information, intellectual property rights owners are deprived of the ability to enforce their legal rights in protecting T20 World Cup indicia and images, which may result in insufficient revenue being raised, thus jeopardising the ability to stage the T20 World Cup. This regime provides a limited and reasonable manner of achieving this objective, with several safeguards in place. For example, the collection and dissemination of information will only occur in specified circumstances (where
the goods are suspected of infringing a trade mark or copyright), whereby the
Comptroller-General of Customs has the power to seize goods. The Comptroller-
General of Customs may only seize copies or goods in the circumstances specified in
section 135 of the Copyright Act and section 133 of the Trade Marks Act and
disclosure of the information in the claim for release form is limited to the intellectual
property rights owner or designated representative.

The limitations associated with the right to protection against arbitrary and unlawful
interferences with privacy through the collection, use, storage and sharing of personal
information are reasonable, necessary and proportionate to achieving the objective of
promoting fair trial and fair hearing rights.

*Fair trial and fair hearing rights*

The provisions permitting seizure of goods in the Copyright Act (Part V – Remedies
and Offences, Division 7 – Seizure of imported copies of copyright material) and the
Trade Marks Act (Part 13 – Importation of goods infringing Australian trade marks)
engage fair trial and fair hearing rights (Article 14(1) of ICCPR). Article 14(1)
provides that everyone is entitled to a fair and public hearing before an independent
and impartial court or tribunal in the determination of any suit at law (i.e. civil
proceedings) or criminal charge. The Trade Marks Act (Part 12 – Infringement of
Trade Marks), the Copyright Act (Part V – Remedies and Offences) and the Major
Sporting Events Act (Part 4 – Importation of goods) provide persons who believe that
their goods have been wrongly seized with civil proceedings to challenge the
intellectual property owner to reclaim their goods. These safeguards engage but do not
limit nor promote the right to a fair trial or fair hearing.

**Conclusion**

The Bill is compatible with human rights because it advances the protection of human
rights through promoting the right of individuals to enjoy and benefit from
participating in cultural life, and to the extent that it also limits human rights, those
limitations are reasonable, necessary and proportionate.

*Senator the Hon Bridget McKenzie, Minister for Regional Services, Sport,
Local Government and Decentralisation*
NOTES ON CLAUSES

Clause 1 – Short Title
Clause 1 provides for the short title of the Act to be the *Major Sporting Events (Indicia and Images) Protection Amendment Act 2018*.

Clause 2 – Commencement
This clause sets out when the Act commences, which is the day after the Act receives Royal Assent.

Clause 3 – Schedule(s)
This clause provides that each Act that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item has effect according to its terms. This is a technical provision which gives operational effect to the amendments contained in the Schedules. Schedule 1 amends the *Major Sporting Events (Indicia and Images) Protection Act 2014* (the Act).

SCHEDULE 1 — AMENDMENTS TO THE MAJOR SPORTING EVENTS (INDICIA AND IMAGES) PROTECTION ACT 2014

Item 1 – Subsection 16(1) (note)
This item amends ‘note’ to ‘note 1’ to allow for the inclusion of additional notes after Subsection 16 (1).

Item 2 – At the end of subsection 16(1)
This item inserts ‘Note 2’ which outlines the consequences provided in Part 4 and Part 5 of the Act if unauthorised use of a major sporting event’s protected indicia or images for commercial purposes takes place during that event’s protection period.

Item 3 – Schedules 1 and 2
This item repeals the Schedules relating to the historical events being the Asian Football Confederation (AFC) Asian Cup 2015 and the International Cricket Council (ICC) Cricket World Cup 2015.

The protections provided by the Act ceased to have effect for the AFC Asian Cup 2015 from 30 June 2015 and the ICC Cricket World Cup 2015 from 31 March 2016.

The item also inserts a new Schedule 1 to provide certain intellectual property and rights protection under this legislation for the ICC T20 World Cup 2020.

Schedule 1 – ICC T20 World Cup 2020

Item 1 – ICC T20 World Cup 2020 is a major sporting event
This item identifies the ICC T20 World Cup 2020 (comprising separate women’s and men’s tournaments) as a recognised major sporting event under this legislation.
Item 2 – Authorising body for ICC T20 World Cup 2020
This item identifies the ICC Business Corporation FZ-LLC as the authorising body for the purposes of the ICC T20 World Cup 2020.

Item 3 – Event bodies for ICC T20 World Cup 2020
This item identifies the key organisations that are recognised as event bodies for the ICC T20 World Cup 2020 as;
- ICC – the T20 World Cup 2020 event owner and owner of the intellectual property rights;
- ICC Business Corporation FZ-LLC – the authorising body that has been granted staging rights for the ICC T20 World Cup 2020 by the ICC;
- Cricket Australia – the national sporting organisation that has been granted the rights to host the ICC T20 World Cup 2020 in Australia; and
- T20 World Cup 2020 Ltd. – the local organising committee, which is a wholly owned subsidiary of Cricket Australia.

Item 4 – Protected indicia for the ICC T20 World Cup 2020
This item provides the agreed list of protected expressions covered by this legislation. These expressions are protected regardless of whether they are used alone or they are accompanied by any other expression, letter, number or symbol.

The agreed list has been developed in consultation with the event bodies and IP Australia.

The rules may prescribe additional words, phrases or expressions to be added to the schedule.

Previous experience indicates that between the Bill receiving Royal Assent and the commencement of the event, there may be additional protections required which need to be added promptly or when Parliament is not sitting. For example the AFC Asian Cup 2015 was held in January 2015 and immediately prior to the event, the event organisers requested additional protections for new phrasings including a newly created mascot. As Parliament was not sitting, these protections were only able to be added to the existing schedule for the event through use of the rules.

The rules will not be used to remove or limit the rights of the community to freedom of expression, particularly in relation to words that have passed into common usage.

Item 5 – When protected indicia and images relate to an event body for the ICC T20 World Cup 2020
This item states that protected indicia and images for the ICC T20 World Cup 2020 relate to the authorising body, except as prescribed by the rules. If they relate to any other event body, this will also be prescribed in the rules.

This may become necessary should, ahead of the event, the ICC, Cricket Australia or T20 World Cup 2020 Ltd. agree to add further event bodies that the protected indicia and images for the ICC T20 World Cup 2020 relate to.
Item 6 – Protection period for ICC T20 World Cup 2020

This item identifies the period for which the protection is provided for the protected indicia and images. The protection commences on commencement of the Act and ceases to have effect after 30 November 2021 or earlier as prescribed by the rules.

This may become necessary should the ICC remove hosting rights for the event from Australia or should unforeseeable date changes to the event occur.